

NATIONAL MARINE SANCTUARIES REAUTHORIZATION AND IMPROVEMENT ACT OF 1992

JUNE 15, 1992.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. JONES of North Carolina, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 4310]

[Including cost estimate of the Congressional Budget Office]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 4310) to reauthorize and improve the national marine sanctuaries program, and to establish the Coastal and Ocean Sanctuary Foundation, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Marine Sanctuaries Reauthorization and Improvement Act of 1992".

SEC. 2. FINDINGS, PURPOSES, AND POLICIES.

(a) FINDINGS.—Section 301(a) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431) is amended—

(1) in paragraph (2)—

(A) by inserting "cultural," after "educational,"; and

(B) by inserting "and in some cases international," after "national";

(2) in paragraph (4)—

(A) by inserting "and research" after "conservation"; and

(B) by striking "and" after the semicolon at the end;

(3) in paragraph (5) by striking the period at the end and inserting a semicolon instead; and

(4) by adding at the end the following—

"(6) protection of these special areas can contribute to maintaining a natural assemblage of living resources for future generations; and

"(7) the Nation can contribute to that maintenance by including sites representative of biogeographic regions of its coastal and ocean waters and Great Lakes among the national marine sanctuaries established under this title."

(b) **PURPOSES AND POLICIES.**—Section 301(b) of the Marine Protection, Research, and Sanctuaries Act of 1972 is amended to read as follows—

"(b) **PURPOSES AND POLICIES.**—The purposes and policies of this title are—

"(1) to identify and designate as national marine sanctuaries areas of the marine environment which are of special national significance;

"(2) to provide authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities;

"(3) to support, promote and coordinate scientific research on, and monitoring of, the resources of these marine areas, especially long-term monitoring and research of these areas;

"(4) to enhance public awareness, understanding, appreciation, and wise use of the marine environment;

"(5) to allow, to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities;

"(6) to develop and implement coordination plans for the conservation and management of these areas with assistance from appropriate Federal agencies, State, local and native governments, and other public and private interests;

"(7) to create models of, and incentives for, ways to conserve and manage these areas;

"(8) to cooperate with global programs encouraging conservation of marine resources; and

"(9) to maintain, restore, and enhance living resources by providing places for species that depend upon these marine areas to survive and propagate."

SEC. 3. DEFINITIONS.

(a) **MARINE ENVIRONMENT.**—Section 302(3) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1432(3)) is amended by adding "including the Exclusive Economic Zone," after "jurisdiction,"

(b) **DAMAGES.**—Section 302(6) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1432(6)) is amended—

(1) in subparagraph (A)(ii) by striking "and" at the end;

(2) in subparagraph (B) by inserting "and" at the end; and

(3) by adding at the end the following—

"(C) the reasonable cost of monitoring appropriate to the injured, restored, or replaced resources;"

(c) **RESPONSE COSTS.**—Section 302(7) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1432(7)) is amended by inserting "or authorized" after "taken".

(d) **SANCTUARY RESOURCE.**—Section 302(8) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1432(8)) is amended—

(1) by inserting "cultural," after "educational,"

(2) by striking the period after "value of the sanctuary" and inserting instead "; and"; and

(3) by adding the following after paragraph (8)—

"(9) 'Exclusive Economic Zone' means the Exclusive Economic Zone as defined in the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802)."

(e) **TECHNICAL CORRECTION.**—Section 302 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1432) is amended—

(1) in paragraph (1) by striking "304(a)(1)(E)" and inserting "304(a)(1)(C)(v)"; and

(2) in paragraph (5) by striking "and" after the semicolon.

SEC. 4. SANCTUARY DESIGNATION STANDARDS.

(a) **STANDARDS.**—Section 303(a)(2)(B) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1433(a)(2)(B)) is amended by inserting "or should be supplemented" after "inadequate".

(b) **FACTORS AND CONSULTATIONS.**—

(1) Section 303(b)(1)(A) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1433(b)(1)(A)) is amended by inserting "maintenance of critical habitat of endangered species," after "assemblages,".

(2) Section 303(b)(3) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1433(b)(3)) is amended—

(A) by inserting “, governmental,” after “other commercial” and inserting “, governmental,” after “any commercial”; and

(B) by adding at the end—

“The Secretary, in consultation with the Secretary of Defense, the Secretary of Energy, and the Administrator, shall draft a resource assessment section for the report regarding any past, present, or proposed future disposal of materials or detonation of ordnance in the vicinity of the proposed sanctuary.”; and

(C) by striking “304(a)(1)” and inserting “304(a)(2)”.

SEC. 5. PROCEDURES FOR DESIGNATION AND IMPLEMENTATION.

(a) SANCTUARY PROPOSAL.—Section 304 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1434) is amended—

(1) by striking “prospectus” wherever it appears and inserting instead “documents”;

(2) in subparagraph (a)(1)(C) by striking “a prospectus on the proposal which shall contain—” and inserting instead “documents, including an executive summary, consisting of—”;

(3) by adding after paragraph (a)(3) the following—

“(4) FEDERAL AGENCY COMMENTS.—Comments by Federal agencies on any notice or documents issued under this section must be provided to the Secretary by the close of the official public comment period required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).”;

(4) by renumbering the remaining paragraphs accordingly;

(5) by altering any reference to the renumbered paragraphs accordingly;

(6) in former paragraph (a)(4) by inserting “cultural,” after “educational,”; and

(7) in former paragraph (a)(5)—

(A) by striking “United States Fishery Conservation Zone” and inserting instead “United States Exclusive Economic Zone”; and

(B) by adding at the end—

“The Secretary shall also cooperate with other appropriate fishery management authorities with rights or responsibilities within a proposed sanctuary at the earliest practicable stage in drafting any sanctuary fishing regulations.”.

(b) TAKING EFFECT OF DESIGNATIONS.—Section 304(b) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1434(b)) is amended—

(1) in paragraph (1) by striking the dash after “unless” and inserting instead—

“in the case of a national marine sanctuary that is located partially or entirely within the seaward boundary of any State, the Governor affected certifies to the Secretary that the designation of any of its terms is unacceptable, in which case the designation or the unacceptable term shall not take effect in the area of the sanctuary lying within the seaward boundary of the State.”;

(2) striking subparagraphs (b)(1)(A) and (b)(1)(B);

(3) in paragraph (b)(2) by—

(A) striking “(A) or (B)” before “will affect”;

(B) by striking “not disapproved under paragraph (1)(A) or”; and

(C) by striking “(B)” before “shall take effect.”; and

(4) by striking paragraph (b)(3) and renumbering the following paragraph.

(c) ACCESS AND VALID RIGHTS.—Section 304(c)(1) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1434 (c)) is amended to read as follows—

(1) Nothing in this title shall be construed as terminating or granting to the Secretary the right to terminate any valid lease, permit, license, treaty right, or right of subsistence use or of access that is in existence on the date of designation of any national marine sanctuary.”.

(d) ANNUAL REPORT.—Section 304 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1434) is amended by adding at the end the following—

“(d) ANNUAL REPORT TO CONGRESS.—The Secretary shall prepare and submit to Congress, no later than February 15 of each year, a status report on the National Marine Sanctuary Program.

“(e) INTERAGENCY COOPERATION.—

“(1) Subject to any guidelines the Secretary may establish, the head of a Federal agency shall consult with the Secretary on a prospective agency action that is likely to destroy, cause the loss of, or injure any sanctuary resource.

"(2) Promptly after the conclusion of consultations under paragraph (1), the Secretary shall provide to the head of a Federal agency a written statement setting forth the Secretary's determination whether the agency action is likely to destroy, cause the loss of, or injure any sanctuary resource. The statement shall also include a summary of the information on which the determination is based. If the Secretary finds that the action is likely to destroy, cause the loss of, or injure a sanctuary resource, the Secretary shall suggest reasonable and prudent alternatives which can be taken by the Federal agency in implementing the agency action which will conserve sanctuary resources."

SEC. 6. INTERNATIONAL COOPERATION.

Section 305 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1435) is amended—

(1) in the heading of the section by striking "Application of regulations and international negotiations" and inserting instead "International regulation and cooperation"; and

(2) by adding at the end the following—

"(c) INTERNATIONAL COOPERATION.—The Secretary, in consultation with the Secretary of State and the heads of other appropriate Federal agencies, shall cooperate with foreign countries and international organizations to further the purposes and policies of this title, consistent with applicable regional and multilateral arrangements for the protection and management of special marine areas."

SEC. 7. PROHIBITED ACTIVITIES.

Section 306 of the Marine Protection, Research, and Sanctuaries Act of 1972 (U.S.C. 1436) is amended to read as follows—

"PROHIBITED ACTIVITIES.—It is unlawful to—

"(1) destroy, cause the loss of, or injure any sanctuary resource managed under law or regulations for that sanctuary;

"(2) possess, sell, deliver, carry, transport, or ship by any means any sanctuary resource taken in violation of this section;

"(3) interfere with the enforcement of this title; or

"(4) violate any provision of this title or any regulation or permit issued pursuant to this title."

SEC. 8. ENFORCEMENT.

(a) CIVIL PENALTIES.—

(1) Section 307(c)(1) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1437(c)(1)) is amended by striking "\$50,000" and inserting instead "\$100,000".

(2) Section 307(c)(3) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1437(c)(3)) is amended by adding at the end—

"The penalty shall constitute a maritime lien on the vessel and may be recovered in an action in rem in any district court of the United States that has jurisdiction over the vessel."

(b) FORFEITURE.—Section 307(d)(1) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1437(d)(1)) is amended by adding at the end—

"The proceeds from forfeiture actions under this subsection shall constitute a separate recovery in addition to any amounts recovered as civil penalties under this section or as damages under section 312 of this title."

(c) USE OF RECEIVED AMOUNTS.—Section 307 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1437) is amended by striking subsection (e)(1) and inserting—

"(1) EXPENDITURES.—

"(A) Notwithstanding any other law, amounts received by the United States as civil penalties, forfeitures of property, and costs imposed under paragraph (2) shall be retained by the Secretary in the manner provided for in section 107(f)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9607(f)(1)).

"(B) Amounts received under this section for forfeitures and costs imposed under paragraph (2) shall be used to pay the reasonable and necessary costs incurred by the Secretary to provide temporary storage, care, maintenance, and disposal of any sanctuary resource or other property seized in connection with a violation of this title or any regulation or permit issued under this title.

"(C) Amounts received under this section as civil penalties and any amounts remaining after the operation of subparagraph (B) shall be used, in order of priority, to—

"(i) manage and improve the national marine sanctuary with respect to which the violation occurred that resulted in the penalty or forfeiture;

"(ii) pay a reward to any person who furnishes information leading to an assessment of a civil penalty, or to a forfeiture of property, for a violation of this title or any regulation or permit issued under this title; and

"(iii) manage and improve any other national marine sanctuary."

(d) **CONFORMING AMENDMENT.**—Section 312(d) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1437(d)) is amended by—

(1) striking "and civil penalties under section 307";

(2) striking paragraph (3); and

(3) renumbering the remaining paragraph.

(e) **ENFORCEABILITY.**—Section 307 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1437) is amended by adding at the end the following—

"(j) **AREA OF APPLICATION AND ENFORCEABILITY.**—The area of application and enforceability of this title includes the territorial sea of the United States, as described in Presidential Proclamation 5928 of December 27, 1988, which is subject to the sovereignty of the United States."

SEC. 9. MONITORING AND EDUCATION.

Section 309 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1437) is amended—

(1) by inserting "MONITORING, AND EDUCATION" at the end of the section heading;

(2) by striking "take such action as is necessary to";

(3) by inserting "monitoring, and education" before "purposes";

(4) in paragraph (1)—

(A) by striking "National Oceanic and Atmospheric Administration" and inserting instead "Under Secretary of Commerce for Oceans and Atmosphere";

(B) by inserting "monitoring, and education" before "give priority"; and

(C) by striking "to research involving" and inserting instead "to the extent practicable, to activities which involve"; and

(5) in paragraph (2) by inserting before the period at the end "monitoring, and education, including coordination with the system of national estuarine reserves established under section 315 of the Coastal Zone Management Act of 1972".

SEC. 10. COOPERATIVE AGREEMENTS AND DONATIONS.

Section 311 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1442) is amended to read as follows—

"**COOPERATIVE AGREEMENTS, GRANTS, DONATIONS, AND ACQUISITIONS.**—(a) **AGREEMENTS AND GRANTS.**—The Secretary may enter into cooperative agreements and financial agreements, including contracts and grants, with any State, tribal or local government, regional or interstate agency, private person, or nonprofit organization to assist the Secretary in carrying out the purposes and policies of this title.

"(b) **DONATIONS.**—

"(1) **ACCEPTANCE OF DONATIONS.**—The Secretary may solicit and accept donations of funds, property, and services as gifts or bequests for use in designating and administering national marine sanctuaries under this title.

"(2) **AGREEMENT.**—The Secretary may enter into agreements with any nonprofit organization authorizing the organization to solicit donations for the Secretary under this subsection.

"(3) **ACQUISITIONS.**—The Secretary may acquire by purchase, lease, or exchange, any land, facilities, or other property necessary and appropriate to carry out the purpose and policies of this title."

SEC. 11. DESTRUCTION OR LOSS OF, INJURY TO, SANCTUARY RESOURCES.

(a) **LIABILITY FOR INTEREST.**—Section 312(a)(1) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1443(a)(1)) is amended to read as follows—

"(1) **LIABILITY TO UNITED STATES.**—Any person who destroys, causes the loss of, or injures any sanctuary resource is liable to the United States for an amount equal to the sum of—

"(i) the amount of response costs and damages resulting from the destruction, loss, or injury; and

"(ii) interest on that amount calculated under section 1005 of the Oil Pollution Act of 1990 (33 U.S.C. 2705)."

(b) **LIABILITY IN REM.**—Section 312(a)(2) of the Marine Protection, Research and Sanctuaries Act of 1972 (16 U.S.C. 1443(a)(2)) is amended by adding at the end—

"The amount of that liability shall constitute a maritime lien on the vessel and may be recovered in an action in rem in any district court of the United States that has jurisdiction over the vessel."

(c) **LIMITS TO LIABILITY.**—Section 312(a) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1443(a)) is amended by adding at the end the following—

"(4) **LIMITS TO LIABILITY.**—Nothing in sections 4281-4289 of the Revised Statutes of the United States or section 3 of the Act of February 13, 1893 (45 App. U.S.C. 181-188, 192) shall limit the liability of any person under this title."

(d) **RESPONSE ACTIONS.**—Section 312(b)(1) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1443 (b)(1)) is amended by inserting "or authorize" after "undertake".

SEC. 12. AUTHORIZATION OF APPROPRIATIONS.

Section 313 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1444) is amended to read—

"**AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Secretary to carry out this title the following—

- "(1) \$15,000,000 for fiscal year 1993;
- "(2) \$20,000,000 for fiscal year 1994;
- "(3) \$25,000,000 for fiscal year 1995; and
- "(4) \$30,000,000 for fiscal year 1996.

Not less than seventy-five percent of the amounts appropriated shall be used for on-site management and operations of designated sanctuaries."

SEC. 13. ADVISORY COUNCILS AND SHORT TITLE.

The Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.) is amended by adding at the end the following—

"SEC. 315. ADVISORY COUNCILS.

"(a) **ESTABLISHMENT.**—The Secretary may establish one or more advisory councils (in this section referred to as an "Advisory Council") to provide assistance to the Secretary regarding the designation and management of national marine sanctuaries. The Advisory Councils shall be exempt from the Federal Advisory Committee Act (5 U.S.C. App. 1).

"(b) **MEMBERSHIP.**—Members of the Advisory councils may be appointed from among—

- "(1) persons employed by Federal or State agencies with expertise in management of natural resources;
- "(2) members of relevant Regional Fishery Management Councils established under section 302 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852); and
- "(3) representatives of local user groups, conservation and other public interest organizations, scientific organizations, educational organizations, or others interested in the protection and multiple use management of sanctuary resources.

"(c) **LIMITS ON MEMBERS.**—For sanctuaries designated after the date of enactment of the National Marine Sanctuaries Reauthorization and Improvement Act of 1992, the membership of Advisory Councils shall be limited to no more than 15 members.

"(d) **PAY.**—

"(1) **IN GENERAL.**—Except as provided in paragraph (2), members of an Advisory Council shall serve without pay.

"(2) **TRAVEL EXPENSES.**—Each member shall receive travel expenses, including per diem in lieu of substance, in accordance with sections 5702 and 5703 of title 5, United States Code.

"(e) **STAFFING AND ASSISTANCE.**—The Secretary may make available to an Advisory Council any staff, information, administrative services, or assistance the Secretary determines are reasonable required to enable the Advisory Council to carry out its functions.

"(f) **PUBLIC PARTICIPATION AND PROCEDURAL MATTERS.**—The following guidelines apply with respect to the conduct of business meetings of an Advisory Council—

"(1) each meeting shall be open to the public, and interested persons shall be permitted to present oral or written statements on items on the agenda.

"(2) emergency meetings may be held at the call of the chairman or presiding officer.

"(3) timely notice of each meeting, including the time, place, and agenda of the meeting, shall be published locally and in the Federal Register.

"(4) minutes of each meeting shall be kept and contain a summary of the attendees and matters discussed.

SEC. 316. SHORT TITLE.

"This title may be cited as 'the National Marine Sanctuaries Act'."

SEC. 14. GRAVEYARD OF THE ATLANTIC ARTIFACTS.

(a) **ACQUISITION OF SPACE.**—Pursuant to section 314 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1445) and consistent with the Cooperative Agreement entered into in October, 1989, between the National Oceanic and Atmospheric Administration and the Mariner's Museum of Newport News, Virginia, the Secretary shall make a grant for the acquisition of space in Hatteras Village, North Carolina, for—

(1) the display and interpretation of artifacts recovered from the area of the Atlantic Ocean adjacent to North Carolina generally known as the Graveyard of the Atlantic, including artifacts recovered from the Monitor National Marine Sanctuary; and

(2) administration and operations of the Monitor National Marine Sanctuary.

(b) **AUTHORIZATION.**—To carry out the Secretary's responsibilities under this section, there are authorized to be appropriated to the Secretary a total of \$800,000 for fiscal years 1993 and 1994, to remain available until expended.

(c) **FEDERAL SHARE.**—Not more than two-thirds of the cost of space acquired under this section may be paid with amounts provided pursuant to this section.

SUMMARY OF THE REPORTED BILL

H.R. 4310 amends title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1431 et seq.), also known as the National Marine Sanctuaries Act (NMSA), to reauthorize the National Marine Sanctuary Program through Fiscal Year 1996 and to make improvements to the program. H.R. 4310 authorizes \$15,000,000 for FY 1993 and increases funding by \$5,000,000 per year to \$30,000,000 by FY 1996.

The bill makes a number of substantive amendments to the NMSA, including amendments to:

Strengthen and clarify the policies and purposes of the program;

Streamline the sanctuary designation process;

Improve enforcement of the NMSA;

Require interagency consultation prior to undertaking activities that may damage sanctuary resources;

Provide deterrents to damaging sanctuary resources;

Strengthen the roles of research and monitoring as components of sanctuary management;

Provide greater flexibility in obtaining private funding and cooperative ventures to improve the designation and management of marine sanctuaries; and

Provide for the establishment of sanctuary advisory councils.

PURPOSE OF THE BILL

The purpose of H.R. 4310 is to reauthorize and improve the National Marine Sanctuary Program. Improvements to the program are accomplished by amending the NMSA.

BACKGROUND AND NEED FOR LEGISLATION

The NMSA authorizes the Secretary of Commerce to designate discrete areas of coastal, ocean, and Great Lakes waters under

United States jurisdiction as national marine sanctuaries to promote their comprehensive long-term management. To qualify for designation as a national marine sanctuary, an area must be of special national significance. In addition, the Secretary of Commerce must determine that existing authorities are inadequate to ensure coordinated and comprehensive conservation and management of the area.

The National Marine Sanctuary Program is administered by the National Oceanic and Atmospheric Administration's (NOAA) Sanctuaries and Reserves Division within the Office of Ocean and Coastal Resource Management. NOAA is responsible for identifying, designating and managing national marine sanctuaries for long-term benefit, use and enjoyment of the public.

The last several years have seen a rapid expansion in both the area managed by the program and the number of sites under consideration for sanctuary designation. In 1990, Congress designated an area of 2,600 square nautical miles as the Florida Keys National Marine Sanctuary. NOAA is finalizing the designation of an area of more than 4,000 square nautical miles off California as the Monterey Bay Marine Sanctuary. Stellwagen Bank, off Cape Cod, is due to be designated a national marine sanctuary by the end of 1992. While additional sanctuaries greatly increase the visibility of the National Marine Sanctuary Program, they place a great strain on the limited resources allocated to the program.

The NMSA is currently authorized through fiscal year 1992 and should be reauthorized before September 30, 1992, to provide continuous authority for appropriations for the program. Certain programmatic changes, which have come to the Committee's attention since the last reauthorization of the NMSA in 1988, are also needed to eliminate problems and meet objectives in management and enforcement of sanctuaries designated under the Act.

COMMITTEE ACTION

The Subcommittee on Oceanography, Great Lakes, and the Outer Continental Shelf and the Subcommittee on Fisheries and Wildlife Conservation and the Environment held two joint hearings on reauthorization of the National Marine Sanctuary Program during the 102nd Congress. On November 7, 1991, the subcommittees held a hearing on general reauthorization issues (Series No. 102-55). In addition, the subcommittees met jointly on March 31, 1992, to receive testimony on the two sanctuary program reauthorization bills discussed below.

Mr. Hertel, Chairman of the Subcommittee on Oceanography, Great Lakes, and the Outer Continental Shelf, introduced H.R. 4310 on February 25, 1992. Nine cosponsors were subsequently added to the bill. Mr. Studds, Chairman of the Subcommittee on Fisheries and Wildlife Conservation and the Environment, and three cosponsors introduced H.R. 4409 on March 5, 1992.

On April 12, 1992, the subcommittees met jointly to mark up H.R. 4310. At the markup, Mr. Hertel, Mr. Studds, and Mr. Young jointly offered an amendment in the nature of a substitute which incorporated provisions of H.R. 4310, H.R. 4409, and the Administration's NMSA reauthorization proposal. The amendment

adopted by voice vote. No other amendments were offered. The bill, as amended, was ordered reported by voice vote to the full Committee.

The full Committee met on May 14, 1992, to mark up H.R. 4310. Chairman Jones offered technical amendments en bloc to the bill as reported by the subcommittees. Mr. Jones offered a second amendment to authorize a grant for the display of artifacts recovered from the Monitor National Marine Sanctuary and for administrative offices for that sanctuary. Both amendments were adopted by voice vote. The bill, as amended, was ordered reported to the House of Representatives by voice vote.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE

The short title of the bill is the National Marine Sanctuaries Reauthorization and Improvement Act of 1992.

SECTION 2. FINDINGS, PURPOSES, AND POLICIES

This section amends the findings, purposes, and policies section of the NMSA. Subsection 2(a) amends the findings section of the NMSA by: including cultural resources among the resources that give an area of the marine environment special national significance; noting that certain resources give areas international, as well as national, significance; including research on marine resources as a positive contribution of the marine sanctuary program; adding a new finding that promotes maintenance of natural assemblages of living resources; and adding a new finding that encourages inclusion of sites representative of biogeography regions among the national marine sanctuaries. While the Committee encourages consideration of biogeography in marine sanctuary site selection, it does not believe that it is necessary to include sites representative of every biogeographic region as part of the system of national marine sanctuaries.

Subsection 2(b) substitutes new text for the purposes and policies section of the NMSA (16 U.S.C. 1431(b)). The new text clarifies the authority of the Secretary of Commerce not only to identify areas appropriate for national marine sanctuaries, but to designate them as sanctuaries. The amendment requires NOAA to manage activities affecting national marine sanctuaries and to allow multiple uses of sanctuary resources, consistent with the primary goal of resource protection. In addition, the next text provides a mandate to support long-term monitoring and research in national marine sanctuaries.

Subsection 2(b) also inserts four new purposes into the NMSA: to develop and implement coordinated conservation and management plans for marine sanctuaries; to create models of, and incentives for, conservation of marine resources; to increase cooperation with global programs encouraging resource conservation; and to enhance living resources by providing places where marine species may survive and propagate.

SECTION 3. DEFINITIONS

This section amends the definitions section of the NMSA (16 U.S.C. 1432). Under section 303 of the NMSA, the Secretary may designate areas of the "marine environment" as national marine sanctuaries. Subsection 3(a) of H.R. 4310 amends the definition of marine environment in the NMSA to include the United States Exclusive Economic Zone (EEZ). This amendment clarifies the authority of the Secretary of Commerce to designate as national marine sanctuaries areas that are, partly or wholly, outside of the United States territorial sea, as described in Presidential Proclamation 5928 of December 27, 1988, but within the U.S. EEZ. Although this authority is implicit in the existing definition, H.R. 4310 provides explicit authority for marine sanctuaries to extend into the EEZ.

Section 312 of the NMSA makes any person who damages resources of a national marine sanctuary liable to the United States for the damages and response costs. The funds recovered under this provision are to be used to restore, if possible, or replace the damaged resources. The Committee believes that an important part of the restoration process is monitoring the recovery of the injured resources or monitoring the progress of any replaced resources. Consistent with this view, subsection 3(b) of H.R. 4310 amends the definition of damages in the NMSA to include the cost of appropriate long-term monitoring of injured, restored, or replaced resources. The appropriate level and term of monitoring should be based on the extent of damage and the importance and sensitivity of the affected resources.

Subsection 3(c) expands the definition of response costs in the NMSA to include the reasonable cost of response actions authorized by the Secretary. Section 312 of the NMSA authorizes the Secretary to take "all necessary actions" to minimize injury to sanctuary resources. The Committee believes that the Secretary should be able to request assistance from other agencies and levels of government and from private entities in responding to natural resource damage within marine sanctuaries. When such assistance is required or advisable, it is appropriate that the costs of those activities be reimbursable under the civil liability provisions of the NMSA.

Subsection 3(d) expands the definition of sanctuary resources in the NMSA to include cultural resources. This subsection also defines the exclusive economic zone in the same way as does the Magnuson Fishery Conservation and Management Act.

SECTION 4. SANCTUARY DESIGNATION STANDARDS

Subsection 4(a) amends the standards used by the Secretary in determining the suitability of an area for designation as a national marine sanctuary. The amendment makes it possible to designate an area if, in addition to meeting other standards, the Secretary determines that existing regulatory authorities are inadequate or should be supplemented.

The factors to be considered in a sanctuary designation (16 U.S.C. 1433(b)) are amended in subsection 4(b) of H.R. 4310. The amendment requires that the Secretary consider, in addition to several other factors, an area's contribution to the maintenance of critical

habitat for endangered species in determining its merits for sanctuary designation. Subsection 4(b) also requires the inclusion of governmental uses of sanctuary resources in the resource assessment report required under section 303 of the NMSA. Lastly, this subsection requires that a description of any past, present, or planned disposal of materials or detonation of ordnance in the vicinity of a proposed marine sanctuary be included in the resource assessment report.

SECTION 5. PROCEDURES FOR DESIGNATION AND IMPLEMENTATION

This section improves the sanctuary designation process (16 U.S.C. 1434) and management of national marine sanctuaries by: eliminating unnecessary provisions; requiring federal agencies to be consistent with the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 et seq.) in commenting on proposed sanctuary designations; and requiring interagency consultation on federal actions likely to harm sanctuary resources.

Subsection 5(a) eliminates the requirement that NOAA submit to Congress a prospectus on a proposed designation. The Committee believes that submission of an environmental impact statement accompanied by an expanded executive summary containing the information required under subparagraph 304(b)(1)(C) of the NMSA is sufficient. This procedural change will allow NOAA to allocate more time and resources on the substantive aspects of the designation process.

Subsection 5(a) also adds a requirement that federal agency comments on notices or documents issued under section 304 of the NMSA must be submitted by the close of the comment period required under NEPA. The Committee notes that avoidable delays in the designation process have been caused by interagency conflicts over proposed sanctuary boundaries and regulations. The Committee expects federal agencies to comply with their responsibility under NEPA regulations to file timely comments.

Finally, subsection 5(a) adds new language to section 304(a)(5) of the NMSA requiring the Secretary to cooperate with appropriate fishery management authorities in addition to Regional Fishery Management Councils when drafting any fishing regulations for a proposed national marine sanctuary. Such entities may include international, state, or Native American tribal fishery management authorities.

Subsection 5(b) deletes part of section 304(b)(1) of the NMSA. The deleted provision provided for a Congressional resolution of disapproval for proposed sanctuary designations. This provision has never been used and the Committee believes that disapproval of, or amendments to, sanctuary designations can be addressed through traditional legislative procedures.

Section 304(c) of the NMSA (16 U.S.C. 1434(c)) prohibits the Secretary from terminating any valid lease, permit, license or right to subsistence use or access that is in effect on the date of designation of any marine sanctuary. Substitute language in subsection 5(c) of H.R. 4310 preserves these rights while simplifying the legislative language.

In addition, the amendment prohibits the termination of the treaty rights of Native Americans in existence on the date of a sanctuary designation. The Committee notes that several tribes of Native Americans inhabit areas adjacent to proposed marine sanctuaries (off the coast of Washington, for example). The Committee recognizes pre-existing treaty rights of Native American tribes as valid rights of use of sanctuary resources and notes that, while they may not be terminated, they may be regulated under a sanctuary management plan.

The Committee expects the Secretary to consult, at the earliest practicable stage in the designation process, with any federally-recognized Native American tribe with treaty rights or fishery management authority that might be affected by a sanctuary designation. The Committee believes that this consultation should occur, where appropriate, under section 304(a)(5) and 304(c) of the NMSA.

Under subsection 5(d), a status report on the National Marine Sanctuary Program must be submitted to the Congress by February 15 of each year. The Committee intends that the report contain a brief assessment of the accomplishments of the program and the status of on-going activities during the period covered by the report. The report is to include a brief description of sites under consideration for active candidacy, the status of sites in the designation process, and sites designated as marine sanctuaries during the period covered. The report need be no more than 20 pages in length and should include budget information and requirements for activities and staff at each sanctuary or active designation site.

Subsection 5(e) adds a new section on interagency cooperation to section 304 of the NMSA. The new section requires the head of any federal agency (action agency) considering an action that is likely to harm a sanctuary resource to consult with the Secretary prior to taking that action. The amendment requires the Secretary to provide the action agency with: (1) a written determination of whether the proposed action is likely to harm any sanctuary resource; and (2) a summary of the information on which the determination is based. If the Secretary determines that the proposed action is likely to harm a sanctuary resource, the Secretary must suggest reasonable alternatives that can be taken by the action agency to conserve sanctuary resources.

The Committee intends that the term "agency action" be applied broadly and that it specifically include: direct actions by federal agencies; and licenses, permits, and other authorizations issued by federal agencies to third parties. In addition, the Committee intends that agency actions encompass all actions that are reasonably likely to affect sanctuary resources while those resources are within sanctuary boundaries, including the cumulative and secondary effects of such actions.

The Committee expects that, in guidelines issued under this section, the Secretary will require a written assessment from the action agency on the proposed action and its potential effects on sanctuary resources. If no impacts on sanctuary resources are expected, the action agency shall so state. The Committee intends that the initial responsibility for consultation lies with the action agency. The Committee expects that the action agency will utilize

NOAA's expertise and familiarity with sanctuary resources in preparing its assessment.

The Secretary's response to an action agency under paragraph 304(e)(2) of the NMSA, as amended by H.R. 4310, must include a determination of whether the prospective action is likely to harm sanctuary resources. If the Secretary determines that the prospective action is likely to harm sanctuary resources, the Secretary's response is to include a delineation of reasonable alternatives to the proposed action that will conserve sanctuary resources. This response should include the level of detail needed, in the judgment of the Secretary, to adequately describe and explain the suggested alternatives to an agency action. The Committee does not intend that any action by the Secretary under subsection 304(e) of the NMSA, as amended by H.R. 4310, will shift the burden of compliance with NEPA from the action agency to the Secretary.

SECTION 6. INTERNATIONAL COOPERATION

This section changes the title of section 305 of the NMSA (16 U.S.C. 1435) to "International regulation and cooperation". Section 6 also adds a new subsection 305(c) to promote better international cooperation to implement the NMSA, consistent with international agreements for the protection and management of marine areas.

It is hoped that NOA will become more involved in the development and exchange of ideas, on a global basis, for the conservation and management of marine resources, particularly those within marine protected areas. The Committee understands that increased international cooperation may include provision of technical assistance and exchange of information. Due to the financial constraints on the program, such assistance should be provided when it is of benefit to the program and if management of existing sanctuaries will not suffer as a result.

SECTION 7. PROHIBITED ACTIVITIES

This section strikes the existing text of section 306 of the NMSA (16 U.S.C. 1436) and inserts in its place new language on prohibited activities. Although anyone damaging resources of a national marine sanctuary is liable under existing law, the NMSA does not explicitly make it unlawful to harm sanctuary resources. Section 7 of H.R. 4310 specifically states that it is unlawful to: damage sanctuary resources that are specifically protected by law or regulation; violate any provision of the NMSA or regulations issued pursuant to the NMSA; possess any sanctuary resources taken illegally; or interfere with the enforcement of the NMSA. This language provides clear and unambiguous authority for enforcement of sanctuary regulations and also provides valuable interdictory authority. The Committee finds that enforcement of sanctuary regulation and interdiction of violations may involve inspection of vessels and other property, where appropriate.

The Committee has carefully considered the relationship between section 312 of the NMSA and the new section 306. Under section 312, a party damaging any sanctuary resource may be held financially liable, up to the full cost of response and restoration. However, section 312 provides the Secretary with no clear preemptive au-

thority or responsibility. The new section 306(1) provides preemptive authority and responsibility by making any action that may destroy or injure a specifically protected sanctuary resource an unlawful act, which the Secretary is compelled to prevent.

The Committee notes that some sanctuary resources, such as fish, move in and out of a sanctuary, and thus, may be physically injured or destroyed by lawful activities outside the boundaries of that sanctuary. The Committee intends that this prohibition apply to: (1) activities inside sanctuary boundaries affecting sanctuary resources that occur within the boundaries of a sanctuary; and (2) activities outside sanctuary boundaries that affect sanctuary resources while those resources are within the sanctuary.

SECTION 8. ENFORCEMENT

Section 8(a) increases the maximum civil penalty for violating the NMSA, or regulations issued under the NMSA, from \$50,000 to \$100,000. Because the civil penalty has not been increased since 1972 when the NMSA was enacted, its value as a deterrent to damaging sanctuary resources has diminished. The Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 101-410) recognized the need for regular adjustments of civil penalties for inflation. If adjusted for inflation, the civil penalty under the NMSA would be over \$100,000. The Committee believes that it is necessary to increase the penalty to \$100,000 at this time to provide a meaningful incentive to abide by sanctuary regulations and to provide sufficient justification for prosecution of violations.

Under the NMSA, the United States has in rem authority over a vessel used to violate that Act. However, civil penalties enforced against a vessel have a lower priority in the disposition of the proceeds from the sale of that vessel than maritime liens recorded against the vessel.

Paragraph 8(a)(2) of H.R. 4310 amends section 307(c)(3) of the NMSA to stipulate that a penalty assessed under section 307 of the NMSA shall constitute a maritime lien on any vessel involved. This will increase the likelihood of recovering civil penalties under the NMSA.

Section 8(b) amends section 307(d)(1) of the NMSA to clarify that forfeiture claims are not subject to set-off against sanctuary resource damage claims or civil penalties. The Committee intends that a forfeiture will constitute a separate claim. This amendment will assist NOAA in recovering amounts sufficient to restore damaged sanctuary resources.

Current provisions of the NMSA regarding the use of forfeiture proceeds restrict the use of these amounts to pay rewards, or to pay for the storage, care, and maintenance of seized property or sanctuary resources. Also under current law, amounts received by the Secretary as civil penalties are to be used for rewards, storage and maintenance costs, the management or improvement of the affected marine sanctuary, and the management and improvement of any other marine sanctuary.

Section 8(c) of H.R. 4310 substitutes new text for these provisions. The amendment requires that amounts recovered as civil penalties or forfeiture proceeds be retained in a revolving fund for

use by the Secretary without appropriation. This parallels the authority for funds recovered for harm to sanctuary resources. The new language requires that forfeiture proceeds be used first to pay for storage costs for seized property or resources. Remaining forfeiture funds and all amounts received as civil penalties are then to be used, in order of priority, to: (1) manage and improve the sanctuary when the violation occurred that gave rise to the penalty or forfeiture; (2) pay rewards for information leading to the assessment of a penalty or to a forfeiture; and (3) manage and improve any other national marine sanctuary.

Management of a marine sanctuary logically includes an appropriate level of enforcement. It is the Committee's intent that amounts used for "management" of a marine sanctuary include the reasonable costs of enforcement of sanctuary regulations.

Subsection 8(d) makes changes to section 312 of the NMSA in conformance with the new civil penalty and forfeiture receipts uses.

A new subsection is added to section 307 of the NMSA by subsection 8(e) of the H.R. 4310. the new subsection provides that the NMSA and regulations issued under it are fully enforceable as domestic law within the 12-mile territorial sea of the United States. The Committee notes that this change is in addition to the language of section 3(a) of the bill that clarifies the authority of the Secretary to designate, and enforce the regulations of, national marine sanctuaries in the U.S. EEZ, consistent with international law. The Committee views this provision as a clarification of authority already conveyed under the NMSA.

SECTION 9. MONITORING AND EDUCATION

Section 309 of the NMSA directs the Secretary of Commerce to promote and coordinate the use of national marine sanctuaries for research. Section 9 of H.R. 4310 amends section 309 to include monitoring and education as priorities within national marine sanctuaries. Section 9 also promotes coordination of the National Marine Sanctuaries Program with the National Estuarine Research Reserve System.

SECTION 10. COOPERATIVE AGREEMENTS AND DONATIONS

Section 10 amends section 311 of the NMSA to give the Secretary express authority to provide financial assistance for research, monitoring, program evaluation, and education. This section allows the Secretary to utilize different legal instruments for entering into agreements with various entities to assist the Secretary in implementing the NMSA. The amendments to section 311 also clarify that donations received under this section are gifts or bequests to the United States. Section 10 also authorizes the Secretary to solicit donations for the program, including contracting with not-for-profit organizations to solicit gifts.

The Committee does not intend that the amendments to section 311 be interpreted to authorize the Secretary to delegate his responsibility for managing and protecting national marine sanctuaries. The Committee carefully chose the phrase "to assist the Secretary in carrying out the purposes and policies of this title" in the

new section 311(a). The Secretary may not, via a cooperative instrument under this section, discharge the Secretary's statutory responsibilities.

Lastly, section 10 authorizes the Secretary to acquire land and facilities as may be needed to achieve the purposes and policies of the NMSA. The Committee finds that adequate administrative, operational, and visitor facilities are vital for the proper functioning of national marine sanctuaries. However, NOAA has been restricted by the lack of authority to acquire real property necessary for efficient operation of the sanctuary program. This new language provides express authority to acquire appropriate facilities.

SECTION 11. DESTRUCTION OR LOSS OF, OR INJURY TO, SANCTUARY RESOURCES

Section 312 of the NMSA makes persons damaging resources of a national marine sanctuary financially liable for that damage. Section 11(a) of H.R. 4310 authorizes the accrual of interest on any assessed response costs and damages. This allows appropriate amounts to be recovered in the event of protracted negotiation or litigation, and parallels existing authority for harm to natural resources caused by oil spills.

Section 11(b) provides that liability under section 312 constitutes a maritime lien on any vessel used in violation of section 312. This provides identical lien authority for sanctuary resource liability to that conveyed for civil penalties by section 8 of H.R. 4310.

Section 11(c) eliminates a general restriction that the liability of a vessel owner is limited to the value of the vessel and its cargo. The Committee believes that liability under section 312 should extend to the full amount of damages and appropriate response costs.

Section 312(b)(1) of the NMSA authorizes the Secretary to take actions to minimize damage to sanctuary resources. Section 11(d) of H.R. 4310 expands this authority to include actions authorized by the Secretary. Identical to the change in the definition of "response costs" in section 3, this amendment allows the Secretary to authorize others to assist the Secretary in minimizing damage, or the imminent risk of damage, to sanctuary resources.

SECTION 12. AUTHORIZATION OF APPROPRIATIONS

This section extends the authorization of appropriations in section 313 of the NMSA through fiscal year 1996. The amendment authorizes \$15,000,000 for the National Marine Sanctuary Program for fiscal year 1993 and increases the authorization by \$5,000,000 per year to an authorized level of \$30,000,000 for fiscal year 1996. An independent review panel convened by NOAA to examine the National Marine Sanctuary Program reported that, for proper management of existing sanctuaries, administration of the program, and selection and designation of new sites, the program should be funded at \$30,000,000 annually ("National Marine Sanctuaries: Challenge and Opportunity", Marine Sanctuaries Review Team, February 22, 1991). The Committee finds that the authorizations contained in H.R. 4310 allow for responsible growth of the

program toward a funding level that is justifiable and necessary for realization of the program's goals.

Section 12 contains a provision requiring at least 75 percent of amounts appropriated for the National Marine Sanctuary Program to be used for on-site management and operations of designated sanctuaries. It is hoped that, over the next several years, NOAA will transfer a greater proportion of its management operations to the field and that the number of pending designations will decrease, making a larger proportion of the program's budget available for regional management and operations of designated sanctuaries. This provision is not intended to hinder currently active designations.

SECTION 13. ADVISORY COUNCILS AND SHORT TITLE

Section 13 creates a new section 315 of the NMSA authorizing the Secretary to establish advisory councils to assist in the designation and management of marine sanctuaries. Advisory councils established under this section are exempt from the requirements of the Federal Advisory Committee Act (FACA, 5 U.S.C. App. 1). The Committee hopes that the establishment of the advisory council for the Florida Keys National Marine Sanctuary was excessively delayed by burdensome administrative requirements of FACA. If advisory councils are to provide timely advice during both the development and implementation of sanctuary management plans, it is essential that councils be convened without unnecessary red tape.

However, some elements of FACA promote responsible government. Accordingly, the amendment contains provisions requiring open meetings, public notice of meetings, and the keeping of minutes. In addition, the amendment limits membership on new sanctuary advisory councils to 15, requires certain experience, expertise, or interest of the part of members, and provides no compensation for service on an advisory council.

Finally, section 13 of H.R. 4310 gives title III of the Marine Protection, Research, and Sanctuaries Act of 1972 a short title, the "National Marine Sanctuaries Act."

SECTION 14. GRAVEYARD OF THE ATLANTIC ARTIFACTS

Section 14 authorizes the Secretary to make a grant for the acquisition of appropriate facilities for display and interpretation of artifacts recovered from the Graveyard of the Atlantic and for office space for the *Monitor* National Marine Sanctuary.

The Graveyard of the Atlantic is an area of the Atlantic Ocean generally located off the Outer Banks of North Carolina. The exact number of shipwrecks in these waters is unknown but may number as high as 1000, giving this area one of the highest densities of shipwrecks in the world. Section 314 of the NMSA requires that a suitable display of artifacts from the U.S.S. *Monitor* be maintained in coastal North Carolina. Implementation of this requirement has been hampered by a lack of suitable facilities. This section authorizes a total of \$800,000 over two fiscal years for the acquisition of suitable space for the display and interpretation of artifacts from the area. A non-federal match of one-third is required for these funds.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 4310 will have no significant inflationary impact on prices and costs in the operation of the national economy.

COST OF THE LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires an estimate by the Committee of the costs which would be incurred in carrying out H.R. 4310. However, clause 7(d) provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 403 of the Congressional budget Act of 1974.

COMPLIANCE WITH HOUSE RULE XI

1. The Subcommittee on Oceanography, Great Lakes, and the Outer Continental Shelf and the Subcommittee on Fisheries and Wildlife Conservation and the Environment jointly held hearings on reauthorization of the National Marine Sanctuary Program on November 7, 1991, and on March 31, 1992.

2. With respect to the requirement of clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, H.R. 4310 does not contain any new budget authority, spending authority, credit authority, or tax expenditures. The bill contains negligible increases in revenues and direct spending.

3. With respect to the requirement of clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Operations on the subject of H.R. 4310.

4. With respect to the requirement of clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 4310 from the Director of the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 5, 1992.

Hon. WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, DC

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for H.R. 4310, the National Marine Sanctuaries Reauthorization and Improvement Act of 1992, as ordered reported by the House Committee on Merchant Marine and Fisheries on May 14, 1992.

Enactment of H.R. 4310 would affect receipts and direct spending and thus would be subject to pay-as-you-go procedures under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985. As a result, the estimate required under clause 8 of House Rule XXI also is attached.

If you wish further details on this estimate, we will be placed to provide them.

Sincerely,

ROBERT D. REISCHAUER,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 4310.
2. Bill title: National Marine Sanctuaries Reauthorization and Improvement Act of 1992.
3. Bill status: As ordered reported by the House Committee on Merchant Marine and Fisheries on May 14, 1992.
4. Bill purpose: H.R. 4310 would amend the Marine Protection, Research, and Sanctuaries Act of 1972 to expand the purposes and policies of the act, clarify the definition of "marine environment", and add new requirements for sanctuary designation and implementation, international cooperation, prohibited activities, and enforcement and damage payments. In addition, the bill would authorize appropriations for the marine sanctuary program for fiscal years 1993 through 1996, and establish one or more advisory councils to advise the Secretary of Commerce regarding the designation and management of marine sanctuaries.
5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1993	1994	1995	1996	1997
Authorizations:					
Authorization level.....	15	20	25	30	0
Estimated outlays.....	9	16	22	27	11
Estimated revenues.....	(¹)	(¹)	(¹)	(¹)	(¹)
Direct spending:					
Estimated budget authority.....	(¹)	(¹)	(¹)	(¹)	(¹)
Estimated outlays.....	(¹)	(¹)	(¹)	(¹)	(¹)

¹ Less than \$500,000.

The costs of this bill fall within budget function 300.

Basis of estimate: CBO assumes that all funds authorized would be appropriated and that spending would occur at historical rates. In addition, CBO expects that funding for the advisory councils established in the bill would come from the authorized funds. CBO estimates that the \$800,000 authorized for the acquisition of space for the display of Graveyard of the Atlantic artifacts would be appropriated in fiscal year 1993 and 1994.

Under current law, NOAA has the authority to collect civil penalties for violations of regulations protecting marine sanctuaries from environmental damage. Penalties owed under the Marine Protection, Research, and Sanctuaries Act of 1972 receive no preference over amounts owed to other creditors in the case of an indi-

vidual that cannot meet debt obligations. Section 8 of the bill would allow NOAA to receive priority treatment over other creditors when making a claim on a vessel owning any civil penalties. In addition, section 8 would increase from \$50,000 to \$100,000 the maximum civil penalty per violation. Based on information from NOAA CBO estimates that this section would cause a negligible increase in receipts. Because the agency has the authority to spend such receipts, there would also be a small increase in direct spending resulting from the collection of these receipts.

In addition to civil penalties, NOAA has the authority to charge individuals who injure or damage sanctuary resources for the cost of the damage sustained. Under current law, interest does not accrue on damage assessments. Under section 11 of the bill, interest would accrue on any outstanding damage payments owed under the Marine Protection, Research, and Sanctuaries Act. In addition, similar to section 8 for civil penalties, this section would grant NOAA priority treatment over other creditors for collections from vessels owing amounts for damage to sanctuary resources. CBO estimates that this section would cause a negligible increase in revenues and a corresponding small increase in direct spending from these collections. The total increase in revenues and in direct spending from sections 8 and 11 would amount to less than \$500,000 a year.

6. Pay-as-you-go considerations: Sections 8 and 11 of the bill would result in small increases in receipts and direct spending. CBO estimates that these amounts would be less than \$500,000 in each fiscal year.

7. Estimated cost to state and local governments: None.

8. Estimate comparison: None.

9. Previous CBO estimate: None.

10. Estimate prepared by: Patricia Conroy and John Stell.

11. Estimate approved by: C.G. Nuckols, Assistant Director for Budget Analysis.

CONGRESSIONAL BUDGET OFFICE ESTIMATE¹

The applicable cost estimate of this act for all purposes of sections 252 and 253 of the Balanced Budget and Emergency Deficit Control Act of 1985 shall be as follows:

(By fiscal year, in millions of dollars)

	1992	1993	1994	1995
Change in outlays	0	0	0	0
Change in receipts	0	0	0	0

¹ An estimate of H.R. 4310 as ordered reported by the House Committee on Merchant Marine and Fisheries in May 14, 1992. This estimate was transmitted by the Congressional Budget Office on June 5, 1992.

DEPARTMENTAL REPORTS

The Committee has received no departmental reports on H.R. 4310.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

16 U.S.C. 1431-1447

§ 1431. Findings, purposes, and policies

(a) FINDINGS.—The Congress finds that—

(1) this Nation historically has recognized the importance of protecting special areas of its public domain, but these efforts have been directed almost exclusively to land areas above the high-water mark;

(2) certain areas of the marine environment possess conservation, recreational, ecological, historical, research, educational, *cultural*, or esthetic qualities which give them special national, *and in some cases international*, significance;

(3) while the need to control the effects of particular activities has led to enactment of resource-specific legislation, these laws cannot in all cases provide a coordinated and comprehensive approach to the conservation and management of special areas of the marine environment;

(4) a Federal program which identifies special areas of the marine environment will contribute positively to marine resources conservation, *research* and management; [and]

(5) such a Federal program will also serve to enhance public awareness, understanding, appreciation, and wise use of the marine environment[.];

(6) *protection of these special areas can contribute to maintaining a natural assemblage of living resources for future generations; and*

(7) *the Nation can contribute to that maintenance by introducing sites representative of biogeographic regions of its coastal and ocean waters and Great Lakes among the national marine sanctuaries established under this title.*

[(b) PURPOSES AND POLICIES.—The purposes and policies of this chapter are—

[(1) to identify areas of the marine environment of special national significance due to their resource or human-use values;

[(2) to provide authority for comprehensive and coordinated conservation and management of these marine areas that will complement existing regulatory authorities;

[(3) to support, promote, and coordinate scientific research on, and monitoring of, the resources of these marine areas;

[(4) to enhance public awareness, understanding, appreciation, and wise use of the marine environment; and

[(5) to facilitate, to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities.]

(b) *PURPOSES AND POLICIES.*—*The purposes and policies of this title are—*

(1) *to identify and designate as national marine sanctuaries areas of the marine environment which are of special national significance;*

(2) *to provide authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities;*

(3) *to support, promote and coordinate scientific research on and monitoring of, the resources of these marine areas, especially long-term monitoring and research of these areas;*

(4) *to enhance public awareness, understanding, appreciation, and wise use of the marine environment;*

(5) *to allow, to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities;*

(6) *to develop and implement coordinated plans for the conservation and management of these areas with assistance from appropriate Federal agencies, State, local and native governments, and other public and private interests;*

(7) *to create models of, and incentives for, ways to conserve and manage these areas;*

(8) *to cooperate with global programs encouraging conservation of marine resources; and*

(9) *to maintain, restore, and enhance living resources by providing places for species that depend upon these marine areas to survive and propagate.*

§ 1432. Definitions

As used in this chapter, the term—

(1) “draft management plan” means the plan described in section [1434(a)(1)(E)] 1434(a)(1)(C)(v) of this title;

(2) “Magnuson Act” means the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.);

(3) “marine environment” means those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands over which the United States exercises jurisdiction, *including the Exclusive Economic Zone*, consistent with international law;

(4) “Secretary” means the Secretary of Commerce;

(5) “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States; [and]

(6) “damages” includes—

(A) compensation for—

(i)(I) the cost of replacing, restoring, or acquiring the equivalent of a sanctuary resource; and

(II) the value of the lost use of a sanctuary resource pending its restoration or replacement or the acquisition of an equivalent sanctuary resource; or

(ii) the value of a sanctuary resource if the sanctuary resource cannot be restored or replaced or if the equivalent of such resource cannot be acquired; **[and]**

(B) the cost of damage assessments under section 312(b)(2); and

(C) *the reasonable cost of monitoring appropriate to the injured, restored, or replaced resources;*

(7) "response costs" means the costs of actions taken or authorized by the Secretary to minimize destruction or loss of, or injury to, sanctuary resources, or to minimize the imminent risks of such destruction, loss, or injury; and

(8) "sanctuary resource" means any living or nonliving resource of a national marine sanctuary that contributes to the conservation, recreational, ecological, historical, research, educational, cultural, or aesthetic value of the sanctuary[.]; and

(9) *"Exclusive Economic Zone" means the Exclusive Economic Zone as defined in the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802).*

§ 1433. Sanctuary designation standards

(a) **STANDARDS.**—The Secretary may designate any discrete area of the marine environment as a national marine sanctuary and promulgate regulations implementing the designation if the Secretary—

(1) determines that the designation will fulfill the purposes and policies of this chapter; and

(2) finds that—

(A) the area is of special national significance due to its resource or human-use values;

(B) existing State and Federal authorities are inadequate *or should be supplemented* to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education;

(C) designation of the area as a national marine sanctuary will facilitate the objectives in subparagraph (B); and

(D) the area is of a size and nature that will permit comprehensive and coordinated conservation and management.

(b) **TAKING EFFECT OF DESIGNATIONS.**—

(1) **NOTICE.**—In designating a national marine sanctuary, the Secretary shall publish in the Federal Register notice of the designation together with final regulations to implement the designation and any other matters required by law, and submit such notice to the Congress. The Secretary shall advise the public of the availability of the final management plan and the final environmental impact statement with respect to such sanctuary. The Secretary shall issue a notice of designation

with respect to a proposed national marine sanctuary site not later than 30 months after the date a notice declaring the site to be an active candidate for sanctuary designation is published in the Federal Register under regulations issued under this Act, or shall publish not later than such date in the Federal Register findings regarding why such notice has not been published. No notice of designation may occur until the expiration of the period for Committee action under subsection (a)(6) of this section. The designation (and any of its terms not disapproved under this subsection) and regulations shall take effect and become final after the close of a review period of forty-five days of continuous session of Congress beginning on the day on which such notice is published unless—

(A) the area's natural resource and ecological qualities, including its contribution to biological productivity, maintenance of ecosystem structure, maintenance of ecological or commercially important or threatened species or species assemblages, *maintenance of critical habitat of endangered species*, and the biogeographic representation of the site;

* * * * *

(3) **RESOURCE ASSESSMENT REPORT.**—In making determinations and findings, the Secretary shall draft, as part of the environmental impact statement referred to in section [1434(a)(1)] *1434(a)(2)* of this title, a resource assessment report documenting present and potential uses of the area, including commercial and recreational fishing, research and education, minerals and energy development, subsistence uses, and other commercial, *governmental*, or recreational uses. The Secretary, in consultation with the Secretary of the Interior, shall draft a resource assessment section for the report regarding any commercial or recreational resource uses in the area under consideration that are subject to the primary jurisdiction of the Department of the Interior. *The Secretary, in consultation with the Secretary of Defense, the Secretary of Energy, and the Administrator, shall draft a resource assessment section for the report regarding any past, present, or proposed future disposal of materials or detonation of ordnance in the vicinity of the proposed sanctuary.*

* * * * *

§ 1434. Procedures for designation and implementation

(a) **SANCTUARY PROPOSAL.**—

(1) **NOTICE.**—In proposing to designate a national marine sanctuary, the Secretary shall—

(A) issue, in the Federal Register, a notice of the proposal, proposed regulations that may be necessary and reasonable to implement the proposal, and a summary of the draft management plan;

(B) provide notice of the proposal in newspapers of general circulation or electronic media in the communities that may be affected by the proposal; and

(C) on the same day the notice required by subparagraph (A) is issued, the Secretary shall submit to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate [a prospectus on the proposal which shall contain—] *documents, including an executive summary, consisting of—*

- (i) the terms of the proposed designation;
- (ii) the basis of the findings made under section 1433(a) of this title with respect to the area;
- (iii) an assessment of the considerations under section 1433(b)(1) of this title;
- (iv) proposed mechanisms to coordinate existing regulatory and management authorities within the area;
- (v) the draft management plan detailing the proposed goals and objectives, management responsibilities, resource studies, interpretive and educational programs, and enforcement, including surveillance activities for the area;
- (vi) an estimate of the annual cost of the proposed designation, including costs of personnel, equipment and facilities, enforcement, research, and public education;
- (vii) the draft environmental impact statement;
- (viii) an evaluation of the advantages of cooperative State and Federal management if all or part of a proposed marine sanctuary is within the territorial limits of any State or is superjacent to the subsoil and seabed within the seaward boundary of a State, as that boundary is established under the Submerged Lands Act (43 U.S.C. 1301 et seq.); and
- (ix) the proposed regulations referred to in subparagraph (A).

(2) ENVIRONMENTAL IMPACT STATEMENT.—The Secretary shall—

(A) prepare a draft environmental impact statement, as provided by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), on the proposal that includes the resource assessment report required under section 1433(b)(3) of this title, maps depicting the boundaries of the proposed designated area, and the existing and potential uses and resources of the area; and

(B) make copies of the draft environmental impact statement available to the public.

(3) PUBLIC HEARING.—No sooner than thirty days after issuing a notice under this subsection, the Secretary shall hold at least one public hearing in the coastal area or areas that will be most affected by the proposed designation of the area as a national marine sanctuary for the purpose of receiving the views of interested parties.

(4) FEDERAL AGENCY COMMENTS.—*Comments by Federal agencies on any notice or documents issued under this section must be provided to the Secretary by the close of the official public*

comment period required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

[(4)] (5) TERMS OF DESIGNATION.—The terms of designation of a sanctuary shall include the geographic area proposed to be included within the sanctuary, the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, *cultural*, or esthetic value, and the types of activities that will be subject to regulation by the Secretary to protect those characteristics. The term of designation may be modified only by the same promotion by which the designation may be modified only by the same procedures by which the original designation is made.

[(5)] (6) FISHING REGULATIONS.—The Secretary shall provide the appropriate Regional Fishery Management Council with the opportunity to prepare draft regulations for fishing within the **[the United States Fishery Conservation Zone]** *United States Exclusive Economic Zone* as the Council may deem necessary to implement the proposed designation. Draft regulations prepared by the Council, or a Council determination that regulations are not necessary pursuant to this paragraph, shall be accepted and issued as proposed regulations by the Secretary unless the Secretary finds that the Council's action fails to fulfill the purposes and policies of this chapter and the goals and objectives of the proposed designation. In preparing the draft regulations, a Regional Fishery Management Council shall use as guidance the national standards of section 1851(a) of this title to the extent that the standards are consistent and compatible with the goals and objectives of the proposed designation. The Secretary shall prepare the fishing regulations, if the Council declines to make a determination with respect to the need for regulations, makes a determination which is rejected by the Secretary, or fails to prepare the draft regulations in a timely manner. Any amendments to the fishing regulations shall be drafted, approved, and issued in the same manner as the original regulations. *The Secretary shall also cooperate with other appropriate fishery management authorities with rights or responsibilities within a proposed sanctuary at the earliest practicable stage in drafting any sanctuary fishing regulations.*

[(6)] (7) COMMITTEE ACTION.—After receiving the **[prospectus]** *documents* under subsection (a)(1)(C) of this section, the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate may each hold hearings on the proposed designation and on the matters set forth in the **[prospectus]** *documents*. If within the forty-five day period of continuous session of Congress beginning on the date of submission of the **[prospectus]** *documents*, either Committee issues a report concerning matters addressed in the **[prospectus]** *documents*, the Secretary shall consider this report before publishing a notice to designate the national marine sanctuary.

(b) TAKING EFFECT OF DESIGNATIONS.—

(1) NOTICE.—In designating a national marine sanctuary, the Secretary shall publish in the Federal Register notice of the

designation together with final regulations to implement the designation and any other matters required by law, and submit such notice to the Congress. The Secretary shall advise the public of the availability of the final management plan and the final environmental impact statement with respect to such sanctuary. No notice of designation may occur until the expiration of the period for Committee action under subsection (a) [(6)] (7) of this section. The designation (and any of its terms not disapproved under this subsection) and regulations shall take effect and become final after the close of a review period of forty-five days of continuous session of Congress beginning on the day on which such notice is published unless [—], *in the case of a national marine sanctuary that is located partially or entirely within the seaward boundary of any State, the governor affected certifies to the Secretary that the designation or any of its terms is unacceptable, in which case the designation or the unacceptable term shall not take effect in the area of the sanctuary lying within the seaward boundary of the State.*

[(A) the designation or any of its terms is disapproved by enactment of a joint resolution of disapproval described in paragraph (3); or

[(B) in the case of a natural marine sanctuary that is located partially or entirely within the seaward boundary of any State, the Governor affected certifies to the Secretary that the designation or any of its terms is unacceptable, in which case the designation or the unacceptable term shall not take effect in the area of the sanctuary lying within the seaward boundary of the State.]

(2) **WITHDRAWAL OF DESIGNATION.**—If the Secretary considers that actions taken under paragraph (1) [(A) or (B)] will affect the designation of a national marine sanctuary in a manner that the goals and objectives of the sanctuary cannot be fulfilled, the Secretary may withdraw the entire designation. If the Secretary does not withdraw the designation, only those terms of the designation [not disapproved under paragraph (1)(A) or] not certified under paragraph (1) [(B)] shall take effect.

[(3) **RESOLUTION OF DISAPPROVAL.**—For the purposes of this subsection, the term “resolution of disapproval” means a joint resolution which states after the resolving clause the following: “That the Congress disapproves the national marine sanctuary designation entitled _____ that was submitted to Congress by the Secretary of Commerce on _____”, the first blank space being filled with the title of the designation and the second blank space being filled with the date on which the notice was submitted to Congress. In the event that the disapproval is addressed to one or more terms of the designation, the joint resolution shall state after the resolving clause the following: “That the Congress approves the national marine sanctuary designation entitled _____ that was submitted to Congress by the Secretary of Commerce on _____ but disapproves the following terms of such designation: _____”, the first blank space being filled with the title of the designation, the second

blank space being filled with the date on which the notice was submitted to Congress, and the third blank space referencing each term of the designation which is disapproved.]

[(4)] (3) PROCEDURES.—

(A) In computing the forty-five day periods of continuous session of Congress pursuant to subsection (a) [(6)] (7) of this section and paragraph (1) of this subsection—

(i) continuity of session is broken only by an adjournment of Congress sine die; and

(ii) the days on which either House of Congress is not in session because of an adjournment of more than three days to a day certain are excluded.

(B) When the committee to which a joint resolution has been referred has reported such a resolution, it shall at any time thereafter be in order to move to proceed to the consideration of the resolution. The motion shall be privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(C) This subsection is enacted by Congress as an exercise of the rulemaking power of each House of Congress, respectively, and as such is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in the case of resolutions described in this subsection. This subsection supersedes other rules only to the extent that they are inconsistent therewith, and is enacted with full recognition of the constitutional right of either House to change the rules (so far as those relate to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

(c) ACCESS AND VALID RIGHTS.—

[(1) Nothing in this chapter shall be construed as terminating or granting to the Secretary the right to terminate any valid lease, permit, license, or right of subsistence use or of access if the lease, permit, license, or right—

[(A) was in existence on Oct. 19, 1984, with respect to any national marine sanctuary designated before that date; or

[(B) is in existence on the date of designation of any national marine sanctuary, with respect to any national marine sanctuary designated after Oct. 19, 1984.]]

(1) Nothing in this title shall be construed as terminating or granting to the Secretary the right to terminate any valid lease, permit, license, treaty right, or right of subsistence use or of access that is in existence on the date of designation of any national marine sanctuary.

(2) The exercise of a lease, permit, license, or right is subject to regulation by the Secretary consistent with the purposes for which the sanctuary is designated.

(d) ANNUAL REPORT TO CONGRESS.—The Secretary shall prepare and submit to Congress, no later than February 15 of each year, a status report on the National Marine Sanctuary Program.

(e) **INTERAGENCY COOPERATION.**—

(1) Subject to any guidelines the Secretary may establish, the head of a Federal agency shall consult with the Secretary on a prospective agency action that is likely to destroy, cause the loss of, or injure any sanctuary resource.

(2) Promptly after the conclusion of consultations under paragraph (1), the Secretary shall provide to the head of a Federal agency a written statement setting forth the Secretary's determination whether the agency action is likely to destroy, cause the loss of, or injure any sanctuary resource. The statement shall also include a summary of the information on which the determination is based. If the Secretary finds that the action is likely to destroy, cause the loss of, or injure a sanctuary resource, the Secretary shall suggest reasonable and prudent alternatives which can be taken by the Federal agency in implementing the agency action which will conserve sanctuary resources.

§ 1435. **[Application of regulations and international negotiations]** *International regulation and cooperation*

(a) **REGULATIONS.**—The regulations issued under section 1434 of this title shall be applied in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party. No regulation shall apply to a person who is not a citizen, national, or resident alien of the United States, unless in accordance with—

(1) generally recognized principles of international law;

(2) an agreement between the United States and the foreign state of which the person is a citizen; or

(3) an agreement between the United States and the flag state of a foreign vessel, if the person is a crewmember of the vessel.

(b) **NEGOTIATIONS.**—The Secretary of State, in consultation with the Secretary, shall take appropriate action to enter into negotiations with other governments to make necessary arrangements for the protection of any national marine sanctuary and to promote the purposes for which the sanctuary is established.

(c) **INTERNATIONAL COOPERATION.**—The Secretary, in consultation with the Secretary of State and the heads of other appropriate Federal agencies, shall cooperate with foreign countries and international organizations to further the purposes and policies of this title, consistent with applicable regional and multilateral arrangements for the protection and management of special marine areas.

§ 1436. **Research and education**

[The Secretary shall conduct research and educational programs as are necessary and reasonable to carry out the purposes and policies of this chapter.]

§ 1436. **Prohibited Activities**

It is unlawful to—

(1) destroy, cause the loss of, or injure any sanctuary resource managed under law or regulations for that sanctuary;

- (2) possess, sell, deliver, carry, transport, or ship by any means any sanctuary resource taken in violation of this section;
- (3) interfere with the enforcement of this title; or
- (4) violate any provision of this title or any regulation or permit issued pursuant to this title.

§ 1437. Enforcement

(a) **IN GENERAL.**—The Secretary shall conduct such enforcement activities as are necessary and reasonable to carry out this chapter.

(b) **POWERS OF AUTHORIZED OFFICERS.**—Any person who is authorized to enforce this chapter may—

(1) board, search, inspect, and seize any vessel suspected of being used to violate this chapter or any regulation or permit issued under this chapter and any equipment, stores, and cargo of such vessel;

(2) seize wherever found any sanctuary resource taken or retained in violation of this chapter or any regulation or permit issued under this chapter,

(3) seize any evidence of a violation of this chapter or of any regulation or permit issued under this chapter;

(4) execute any warrant or other process issued by any court of competent jurisdiction; and

(5) exercise any other lawful authority.

(c) **CIVIL PENALTIES.**

(1) **CIVIL PENALTY.**—Any person subject to the jurisdiction of the United States who violates this chapter or any regulation or permit issued under this chapter shall be liable to the United States for a civil penalty of not more than **[\$50,000]** **\$100,000** for each such violation, to be assessed by the Secretary. Each day of a continuing violation shall constitute a separate violation.

(2) **NOTICE.**—No penalty shall be assessed under this subsection until after the person charged has been given notice and an opportunity for a hearing.

(3) **IN REM JURISDICTION.**—A vessel used in violating this chapter or any regulation or permit issued under this chapter shall be liable in rem for any civil penalty assessed for such violation and may be processed against in any district court of the United States having jurisdiction. *The penalty shall constitute a maritime lien on the vessel and may be recovered in an action in rem in any district court of the United States that has jurisdiction over the vessel.*

(4) **REVIEW OF CIVIL PENALTY.**—Any person against whom a civil penalty is assessed under this subsection may obtain review in the United States district court for the appropriate district by filing a complaint in such court not later than 30 days after the date of such order.

(5) **COLLECTION OF PENALTIES.**—If any person fails to pay an assessment of a civil penalty under this section after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity

and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(6) COMPROMISE OR OTHER ACTION BY SECRETARY.—The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is or may be imposed under this section.

(d) FORFEITURE.—

(1) IN GENERAL.—Any vessel (including the vessel's equipment, stores, and cargo) and other item used, and any sanctuary resource taken or retained, in any manner, in connection with or as a result of any violation of this chapter or of any regulation or permit issued under this chapter shall be subject to forfeiture to the United States pursuant to a civil proceeding under this subsection. *The proceeds from forfeiture actions under this subsection shall constitute a separate recovery in addition to any amounts recovered as civil penalties under this section or as damages under section 312 of this title.*

(e) PAYMENT OF STORAGE, CARE, AND OTHER COSTS.—

[(1) IN GENERAL.—Notwithstanding any other law, the Secretary may use amounts received under this section in the form of civil penalties, forfeitures of property, and costs imposed under paragraph (2) to pay—

[(A) the reasonable and necessary costs incurred by the Secretary in providing temporary storage, care, and maintenance of any sanctuary resource or other property seized under this section pending disposition of any civil proceeding relating to any alleged violation with respect to which such property or sanctuary resource was seized; and

[(B) a reward to any person who furnishes information leading to an assessment of a civil penalty, or to a forfeiture of property, for a violation of this chapter or of any regulation or permit issued under this chapter.]

(j) AREA OF APPLICATION AND ENFORCEABILITY.—*The area of application and enforceability of this title includes the territorial sea of the United States, as described in Presidential Proclamation 5928 of December 27, 1988, which is subject to the sovereignty of the United States.*

(1) EXPENDITURES.—

(A) *Notwithstanding any other law, amounts received by the United States as civil penalties, forfeitures of property, and costs imposed under paragraph (2) shall be retained by the Secretary in the manner provided for in section 107(f)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9607(f)(1)).*

(B) *Amounts received under this section for forfeitures and costs imposed under paragraph (2) shall be used to pay the reasonable and necessary costs incurred by the Secretary to provide temporary storage, care, maintenance, and disposal of any sanctuary resource or other property seized in*

connection with a violation of this title or any regulation or permit issued under this title.

(C) Amounts received under this section as civil penalties and any amounts remaining after the operation of subparagraph (B) shall be used, in order of priority, to—

(i) manage and improve the national marine sanctuary with respect to which the violation occurred that resulted in the penalty or forfeiture;

(ii) pay a reward to any person who furnishes information leading to an assessment of a civil penalty, or to a forfeiture of property, for a violation of this title or any regulation or permit issued under this title; and

(iii) manage and improve any other national marine sanctuary.

* * * * *

§ 1440. Promotion and coordination of research, monitoring, and education

The Secretary shall [take such action as is necessary to] promote and coordinate the use of national marine sanctuaries for research, monitoring, and education.

(1) requiring that the [National Oceanic and Atmospheric Administration], Under Secretary of Commerce for Oceans and Atmosphere in conducting or supporting marine research, monitoring, and education, give priority [to research involving] to the extent practicable, to activities which involve national marine sanctuaries; and

(2) consulting with other Federal and State agencies to promote use by such agencies of one or more sanctuaries for marine research, monitoring, and education, including coordination with the system of national estuarine reserves established under section 315 of the Coastal Zone Management Act of 1972.

§ 1442. [Cooperative agreements and donations] Cooperative agreements, grants, donations, and acquisitions

[(a) COOPERATIVE AGREEMENTS.—The Secretary may enter into cooperative agreements with any nonprofit organization—

[(1) to aid and promote interpretive, historical, scientific and educational activities; and

[(2) for the solicitation of private donations for the support of such activities.

[(b) DONATIONS.—The Secretary may accept donations of funds, property, and services for use in designating and administering national marine sanctuaries under this chapter.]

(a) AGREEMENTS AND GRANTS.—The Secretary may enter into cooperative agreements and financial agreements, including contracts and grants, with any State, tribal or local government, regional or interstate agency, private person, or nonprofit organization to assist the Secretary in carrying out the purposes and policies of this title

(b) DONATIONS.—

(1) *ACCEPTANCE OF DONATIONS.*—The Secretary may solicit and accept donations of funds, property, and services as gifts or bequests for use in designating and administering national marine sanctuaries under this title.

(2) *AGREEMENTS.*—The Secretary may enter into agreements with any nonprofit organization authorizing the organization to solicit donations for the Secretary under this subsection.

(3) *ACQUISITIONS.*—The Secretary may acquire by purchase, lease, or exchange, any land, facilities, or other property necessary and appropriate to carry out the purposes and policies of this title.

§ 1443. Destruction or loss of, or injury to, sanctuary resources

(a) *LIABILITY.*—

[(1) *IN GENERAL.*—Subject to paragraph (3), any person who destroys, causes the loss of, or injures any sanctuary resource is liable to the United States for response costs and damages resulting from such destruction, loss, or injury.]

(1) *LIABILITY TO UNITED STATES.*—Any person who destroys, causes the loss of, or injures any sanctuary resource is liable to the United States for an amount equal to the sum of—

(i) the amount of response costs damages resulting from the destruction, loss, or injury; and

(ii) interest on that amount calculated under section 1005 of the Oil Pollution Act of 1990 (33 U.S.C. 2705).

(2) *LIABILITY IN REM.*—Any vessel used to destroy, cause the loss of, or injure any sanctuary resource shall be liable in rem to the United States for response costs and damages resulting from such destruction, loss, or injury. The amount of that liability shall constitute a maritime lien on the vessel and may be recovered in an action in rem in any district court of the United States that has jurisdiction over the vessel.

(3) *DEFENSES.*—A person is not liable under this subsection if that person establishes that—

(A) the destruction or loss of, or injury to, the sanctuary resource was caused solely by an act of God, an act of war, or an act or omission of a third party, and the person acted with due care;

(B) the destruction, loss, or injury was caused by an activity authorized by Federal or State law; or

(C) the destruction, loss, or injury was negligible.

(4) *LIMITS TO LIABILITY.*—Nothing in sections 4281-4289 of the Revised Statutes of the United States or section 3 of the Act of February 13, 1893 (46 App. U.S.C. 181-188, 192) shall limit the liability of any person under this title.

(b) *Response Action and Damage Assessment.*—

(1) *RESPONSE ACTIONS.*—The Secretary may undertake or authorize all necessary actions to prevent or minimize the destruction or loss of, or injury to sanctuary resources, or to minimize the imminent risk of such destruction, loss, or injury.

(2) *DAMAGE ASSESSMENT.*—The Secretary shall assess damages to sanctuary resources in accordance with section 4132(6) of this title.

(d) **USE OF RECOVERED AMOUNTS.**—Response costs and damages recovered by the secretary under this section [and civil penalties under section 307] shall be retained by the Secretary in the manner provided for in section 107(f)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9607(f)(1)), and used as follows:

(1) **RESPONSE COSTS AND DAMAGE ASSESSMENTS.**—Twenty percent of amounts recovered under this section, up to a maximum balance of \$750,000, shall be used to finance response actions and damage assessments by the Secretary.

(2) **RESTORATION, REPLACEMENT, MANAGEMENT, AND IMPROVEMENT.**—Amounts remaining after the operation of paragraph (1) shall be used, in order of priority—

(A) to restore, replace, or acquire the equivalent of the sanctuary resources which were the subject of the action;

(B) to manage and improve the national marine sanctuary within which are located the sanctuary resources which were the subject of the action; and

(C) to manage and improve any other national marine sanctuary.

(3) **USE OF CIVIL PENALTIES.**—Amounts recovered under section 307 in the form of civil penalties shall be used by the Secretary in accordance with section 307(e) and paragraphs (2)(B) and (C) of this subsection.]

(4) **(3) Federal-State coordination.**—Amounts recovered under this section with respect to sanctuary resources lying within the jurisdiction of a State shall be used under paragraphs (2)(A) and (B) in accordance with an agreement entered into by the Secretary and Government of that State.

[§ 1444. Authorization of appropriations

[There are authorized to be appropriated to the Secretary to carry out this title the following:

(1) **GENERAL ADMINISTRATION.**—for general administration of this title)—

[(A) \$1,800,000 for fiscal year 1989;

[(B) \$1,900,000 for fiscal year 1990;

[(C) \$2,000,000 for fiscal year 1991; and

[(D) \$2,100,000 for fiscal year 1992.

(2) **MANAGEMENT OF SANCTUARIES.**—For management of national marine sanctuaries designated under this title—

[(A) \$2,000,000 for fiscal year 1989;

[(B) \$2,500,000 for fiscal year 1990;

[(C) \$4,000,000 for fiscal year 1991; and

[(D) \$3,500,000 for fiscal year 1992.

(3) **SITE REVIEW AND ANALYSIS.**—For review and analysis of sites for designation under this title as national marine sanctuaries—

[(A) \$450,000 for fiscal year 1989;

[(B) \$500,000 for fiscal year 1990;

[(C) \$550,000 for fiscal year 1991; and

[(D) \$600,000 for fiscal year 1992.]

§ 1444 Authorization of appropriations

There are authorized to be appropriated to the Secretary to carry out this title the following—

- (1) \$15,000,000 for fiscal year 1993;
- (2) \$20,000,000 for fiscal year 1994;
- (3) \$25,000,000 for fiscal year 1995; and
- (4) \$30,000,000 for fiscal year 1996.

Not less than seventy-five percent of the amounts appropriated shall be used for on-site management and operations of designated sanctuaries.

* * * * *

SEC. 1446. ADVISORY COUNCILS.

(a) **ESTABLISHMENT.**—The Secretary may establish one or more advisory councils (in this section referred to as an "Advisory Council") to provide assistance to the Secretary regarding the designation and management of national marine sanctuaries. The Advisory Councils shall be exempt from the Federal Advisory Committee Act (5 U.S.C. App. 1).

(b) **MEMBERSHIP.**—Members of the Advisory Councils may be appointed from among—

- (1) persons employed by Federal or State agencies with expertise in management of national resources;
- (2) members of relevant Regional Fishery Management Councils established under section 302 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1852); and
- (3) representatives of local user groups, conservation and other public interest organizations, scientific organizations, educational organizations, or others interested in the protection and multiple use management of sanctuary resources.

(c) **LIMITS ON MEMBERSHIP.**—For sanctuaries designated after the date of enactment of the National Marine Sanctuaries Reauthorization and Improvement Act of 1992, the membership of Advisory Councils shall be limited to no more than 15 members.

(d) **PAY.**

(1) **IN GENERAL.**—Except as provided in paragraph (2), members of an Advisory Council shall serve without pay.

(2) **TRAVEL EXPENSES.**—Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(e) **STAFFING AND ASSISTANCE.**—The Secretary may make available to the Advisory Council any staff, information, administrative services, or assistance the Secretary determines are reasonably required to enable the Advisory Council to carry out its functions.

(f) **PUBLIC PARTICIPATION AND PROCEDURAL MATTERS.**—The following guidelines apply with respect to the conduct of business meetings of an Advisory Council—

(1) each meeting shall be open to the public, and interested persons shall be permitted to present oral or written statements on items of the agenda.

(2) emergency meetings may be held at the call of the chairman or presiding officer.

(3) timely notice of each meeting, including the time, place, and agenda of the Federal Register.

(4) minutes of each meeting shall be kept and contain a summary of the attendees and matters discussed.

SEC. 1447. SHORT TITLE.

This title may be cited as "The National Marine Sanctuaries Act".

ADDITIONAL VIEWS SUBMITTED BY DENNIS M. HERTEL

Since introducing H.R. 4310 on February 25, 1992, the Subcommittee, in conjunction with Members of the full Committee on Merchant Marine and Fisheries, has reviewed the accomplishments of the National Marine Sanctuary Program over the past 20 years. Two hearings set the stage for discussion, recommendations from interested parties at every level of government and the private sector were carefully weighed, and the legislation was refined to incorporate changes in the purposes and policies of the program, to streamline the sanctuary evaluation and designation process, and to provide management tools necessary to meet the requirements of law.

In concurring with the report of the Committee, as Chairman of the Subcommittee on Oceanography, Great Lakes and the Outer Continental Shelf, I wish to elaborate on a few topics and emphasize the rationale for some of the changes included in the reauthorization.

Although the National Marine Sanctuary Program has been in existence since 1972, efforts at site selection and designation have been slow and deliberate, often requiring Congressional intervention of effectuate final designations. After 20 years, we find that ten sanctuaries have been designated, with three more in their final designation stages. At this point, we find the Program's focus must necessarily shift from site selection, evaluation, and designation, to the management of field operations for these discrete marine and freshwater areas.

During our discussions on H.R. 4310, it became apparent that initially the Program survived in meager obscurity, suffering from indifference both in program and budget support. At the end of the last decade, a resuscitation occurred, and under the careful eye of Congress, incremental progress was achieved. Now, there is hope that the Program will attain a higher level of visibility and respect, as preservation and conservation efforts get underway.

In studying the recommendations of the Marine Sanctuaries Review Team, I noted that elevation of the Marine Sanctuary Program to a separate Program Office within the National Ocean Service could dramatically improve awareness and support for the program. In lieu of such a statutory adjustment, H.R. 4310 seeks to achieve visibility and positive direction for the program in other ways, leaving the opportunity to revisit this issue in a subsequent authorization.

First, H.R. 4310 provides a justifiable authorization level to meet the requirements of the Marine Sanctuary Program. For fiscal year 1993, \$15,000,000 will enable final designations, field management, and long-standing capital investment requirements to be met. Gradual and steady augmentation of the authorization level is

based on projected staff and resources needs for providing multi-use management of recently designated sanctuaries.

Second, adequate protection of marine resources dictates that sufficient funds for on-site management and operation of designated sanctuaries are available. H.R. 4310 proposes that 75 percent of the funds authorized be used to support on-site management and operations. It is intended that some activities that support on-site management may be more efficiently funded through a central office and would not be charged as headquarters functions.

Third, while there was agreement that the criteria for designation of marine sanctuaries did not require that every biogeographic region be represented by the national program, a full array of representative ecosystems should be a long-term goal.

Fourth, the principle program objectives of conservation, preservation, and enhancement are not intended to be diminished by the additional activities outlined in the law, either as factors considered in establishing sanctuaries, as the focus of research, monitoring, and education, or as goals to be achieved through management.

Fifth, interagency cooperation is paramount to a successful Marine Sanctuary Program. Coupled with this notion is the ability of the Secretary of Commerce to view the Marine Sanctuary Program from a global perspective, encouraging discourse with other nations involved in international research on, and preservation of, marine and freshwater resources.

Finally, there are various incentives included in H.R. 4310 designed to provide the Marine Sanctuary Program with financial resources, cooperative agreements, facilities, and popular support that will significantly benefit the program over the long term.

In conclusion, it is my hope that the reputation of the Marine Sanctuary Program will be held in positive high regard and will steadily grow with size of this national trust we are establishing.

I would like to thank Messrs. Hughes, Davis, Panetta, Fascell, Scheuer, Manton, McDermott, Norton and Saxton for joining in co-sponsorship of H.R. 4310. In addition, I wish to pay tribute to Chairman Walter B. Jones for his inspiration and wise counsel through our joint consideration of this and other legislation of mutual interest in the Merchant Marine and Fisheries Committee.

DENNIS M. HERTEL